IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADVANCEME, INC.	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**CAUSE NO. 6:05-CV-424 LED JDL**
RAPIDPAY, LLC, BUSINESS CAPITAL	§	
CORPORATION, FIRST FUNDS LLC,	§	
MERCHANT MONEY TREE, INC.,	§	
REACH FINANCIAL, LLC and	§	
FAST TRANSACT, INC. d/b/a	§	
SIMPLE CASH	§	
	§	
Defendants.	§	

DEFENDANTS' *EXPEDITED* MOTION FOR HEARING PRIOR TO MAY 18, 2007 ON DEFENDANTS' PARTIAL SUMMARY JUDGMENT MOTION OF PATENT INVALIDITY BASED ON LITLE & CO. PRIOR ART

Defendants First Funds LLC, Merchant Money Tree, Inc., and Reach Financial, LLC (collectively "Defendants") respectfully request that the Court set a hearing prior to May 18, 2007 on Defendants' partial summary judgment motion of patent invalidity based on the Litle & Co. prior art, filed March 12, 2007, with briefing completed April 19, 2007 ("Defendants' Litle & Co. Motion") (Document No. 215). Due to the July 16, 2007 setting for a bench trial in this case, the Court's May schedule, imminent pre-trial deadlines, and issues that will necessarily be resolved on summary judgment, the interest of judicial efficiency will be served by the Court's holding a hearing and deciding Defendants' Litle & Co. Motion as soon as possible. While Defendants understand that whether and when to hold a hearing on dispositive motions is entirely in the discretion of the Court, they understand that a motion such as this is necessary to formally request an early hearing date.

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Due to the expedited nature of Defendants' motion, Defendants request that the Court order Plaintiff to respond to the instant motion by Friday, April 27, 2007. Defendants' counsel will additionally make themselves available by telephone, for example, if the Court determines that a telephone hearing is sufficient to resolve the instant motion. Plaintiff opposes the instant motion, but appears to do so only because it is concerned with the propriety of a motion requesting a hearing when a hearing has already been requested. *See* Ex. A, April 25, 2007 email from Michael Edelman to Joseph Gray. Indeed, Plaintiff indicated that "AdvanceMe certainly has no objection to participating in oral argument if the Court decides to schedule a hearing." *Id.*

Background

As the Court is aware, Defendants filed a motion to compel on November 13, 2007 based on Plaintiff's discovery deficiencies. The Court granted Defendants' motion on December 21, 2007. As a result of the deficiencies, however, critical discovery was delayed several months, and the parties agreed to postpone the close of fact discovery, close of expert discovery, and deadline for dispositive motions. The pre-trial deadlines and trial setting remained unchanged, thus condensing the time between the dispositive motion deadline and the trial date.

Defendants filed their Litle & Co. Motion on March 12, 2007 (one month prior to the April 13, 2007 dispositive motion deadline), and briefing on Defendants' Litle & Co. Motion was completed last Thursday, April 19, 2007. It is now ripe for hearing and determination.

Defendants filed a second motion for partial summary judgment of patent invalidity on April 12, 2007 ("Defendants' LeCard Motion") (Docket No. 232), on wholly independent bases, to which Plaintiff's response is due Wednesday, May 2, 2007 (pursuant to the Court's April 24, 2007 order granting Plaintiff's motion for an extension of time to respond). Briefing on

Defendants' LeCard Motion will thus not be complete until approximately May 16th—roughly one week prior to the Docket Control Order's May 25, 2007 deadline for the parties' proposed findings of fact and conclusions of law and at a time when, as Defendants understand, the Court's schedule is extremely busy.

Argument

Defendants understand that the Court's docket is extremely busy during the month of May, particularly beginning the week of May 21st. Defendants thus request that the Court hold a hearing on Defendants' fully-briefed Litle & Co. Motion as soon as possible. By holding an early hearing on Defendants' Litle & Co. Motion, judicial efficiency is served because the Court will have sufficient time to consider and decide the issues raised by both Defendants' Litle & Co. Motion as well as Defendants' LeCard Motion prior to a full-fledged bench trial. If a single hearing is held on both motions in late May or early June, if the Court is available, only one month will remain before the bench trial before Judge Davis and pre-trial submissions will proceed with no narrowing of issues for trial. While Defendants understand that a single hearing on all dispositive motions is the Court's standard practice, Defendants believe the Court's May schedule, imminent pre-trial deadlines and trial, and the independence of Defendants' partial summary judgment motions present unique circumstances rendering two hearings more efficient in this case.

Regardless of whether the Court grants Defendants' partial summary judgment motions, many of the issues raised therein will necessarily be resolved as questions of law and claim construction prior to the July 16th bench trial. For example, Plaintiff's primary arguments in response to Defendants' Litle & Co. Motion relate to the meaning of claim terms or whether, as a matter of law, the prior use of the Litle & Co. systems and methods constitute a "public use" within the meaning of 35 U.S.C. § 102(b). The facts surrounding these issues, among others, are undisputed, thus these issues should be resolved as a matter of law prior to a bench trial. With an early hearing date, therefore, the Court will have sufficient time to identify whether Judge Davis will need to resolve all of the arguments raised in the parties' summary judgment briefing or whether a trial is necessary at all.

Conclusion

Defendants respectfully request that the Court hold an early hearing on Defendants' Litle & Co. Motion in order to allow the Court time to consider and rule on Defendants' motions prior to pre-trial deadlines and prior to the bench trial beginning July 16, 2007. Defendants are available for a hearing any day during the weeks of April 30th, May 7th, and May 14th and are available at any time via telephone if the Court wishes to discuss scheduling or other issues with the parties. If the Court is inclined to hold only a single hearing on both of Defendants' partial summary judgment motions, Defendants request that the Court set the hearing as early as possible after briefing on Defendants' LeCard Motion is complete (which will be approximately May 16, 2007).

April 25, 2007

Respectfully submitted,

By: /s/ Joseph D. Gray

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that all counsel of record who have consented to electronic service are being served a copy of this document via the court's CM/ECF system per Local Rule CV-5(a)(3) on this the 25th day of April, 2007. Any other counsel of record will be served by first class mail on this same date.

/s/ Joseph D. Gray
Joseph D. Gray

CERTIFICATE OF CONFERENCE

I HEREBY CERTIFY that I conferred with Michael Edelman, counsel for Plaintiff, via email on April 24th and 25th, 2007, and Mr. Edelman indicated that AdvanceMe, Inc. would oppose this motion.

/s/ Joseph D. Gray
Joseph D. Gray